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Keuleers, Ewout; Verbiest, Thibault

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## PRESENTE:

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### **Major search engines sued in Class Action Suit for Taking Online Gambling Ads**

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**Auteurs:** [Thibault Verbiest](#) (Avocat aux barreaux de Paris et de Bruxelles (Cabinet ULYS) - Chargé de cours à l'Université Paris I)

[Ewout Keuleers](#) (Avocat au barreau de Bruxelles - Cabinet ULYS)

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Major US Search engines (e.g. Google and Yahoo !) are being sued in a class action lawsuit filed on the 4th of August in California.

This class action lawsuit is a private Attorney General action brought as a class action and on behalf of the California general public against the major Internet search engine websites which advertise allegedly “illegal Internet gambling” in California.

#### **The causes of action**

The plaintiffs invoke the public policy of the State of California which prohibits the unregulated business of gambling as noted in Cal. Bus. & Prof. Code §19801:

“c) (1) Unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies. “

This principle is enforced through a myriad of California Penal Code provisions including §§320-322, 330, 337 and 337(a), which also makes the advertisement of gambling a principal crime in California.

According to the plaintiffs, defendants and the Internet gambling businesses at issue in this complaint are not licensed in California to provide legal gambling services in the state of California as required by the Gambling Control Act, Cal. Bus. & Prof. Code §§19800, et seq., and therefore, would not have any right to conduct a gambling business in the state of California.

#### **The defendants**

Defendants are the major Internet search engines and advertising information content providers who generate revenues and profits by giving premium advertisements to other websites.

In most cases, defendants earn advertising fees only when an enduser “clicks-through” to gambling websites.

The plaintiffs allege that :

*“(…) despite the illegal nature of unlicensed Internet gambling in California, and the United States in general, each of the defendants actively and knowingly advertise and facilitate illegal Internet gambling by advertising illegal Internet gambling businesses. Each of the defendants actively and knowingly accepts payment to produce advertisements and paid links for websites of unlicensed Internet gambling businesses. This advertising revenue is determined by the search term input by the user. Hence, defendants expressly sell rights to advertise based on such search terms as “illegal gambling,” “Internet gambling,” and “California gambling.” Further, each of the defendants either expressly uses, or has access to, geo-tracking software which permits defendants to be able to target illegal gambling advertisements to particular locations such as California.*

*Defendants’ advertisements have resulted in substantial illegal Internet gambling in California during the past four years, substantial unlawful profits by defendants and their co-conspirators, and substantial gambling losses to California residents. Defendants’ conduct has also resulted in the depletion of substantial tax resources for the State of California, as Internet gambling evades California regulation and taxation contrary to the laws and public policy of this state. The general public has also been harmed, as the net effect of defendants’ illegal actions has been to extract resources out of the legitimate sectors of the California economy and has created financial ruin with its attendant social costs for Californians.* “

### **The relief**

By this action, plaintiffs seek namely to have defendants’ paid advertisement of Internet gambling in California declared illegal, seek to enjoin defendants from advertising unlicensed Internet gambling businesses to persons in California.

### **And in Europe ?**

Articles 12-14 of the European directive on electronic commerce establish precisely defined limitations on the liability of internet intermediaries providing services consisting of mere conduit, caching and hosting. The limitations on liability in the Directive apply to certain clearly delimited activities carried out by internet intermediaries, rather than to categories of service providers or types of information.

The limitations on liability provided for by the Directive are established in a horizontal manner, meaning that they cover liability, both civil and criminal, for all types of illegal activities initiated by third parties.

Article 15 prevents Member States from imposing on internet intermediaries, with respect to activities covered by Articles 12-14, a general obligation to monitor the information which they transmit or store or a general obligation to actively seek out facts or circumstances indicating illegal activities. This is important, as general monitoring of millions of sites and web pages would, in practical terms, be impossible and would result in disproportionate burdens on intermediaries and higher costs of access to basic services for users. However, Article 15 does not prevent public authorities in the Member States from imposing a monitoring obligation in a specific, clearly defined individual case.

In addition to the matters dealt with by Articles 12-14, some Member States (Spain

Austria and EEA-State Liechtenstein and Portugal in its draft law) decided to provide for limitations on the liability of providers of hyperlinks and search engines.

This was motivated by the wish to create incentives for investment and innovation and enhance the development of e-commerce by providing additional legal clarity for service providers.

Whilst it was not considered necessary to cover hyperlinks and search engines in the Directive, the European Commission has encouraged Member States to further develop legal security for internet intermediaries. It is encouraging that recent case-law in the Member States recognizes the importance of linking and search engines to the functioning of the internet. In general, this case-law appears to be in line with the Internal Market objective to ensure the provision of basic intermediary services, which promotes the development of the internet and e-commerce. Consequently, this case-law does not appear to give rise to any Internal Market concerns.

In any case, the Commission will, in accordance with Article 21, continue to monitor and rigorously analyse any new developments, including national legislation, case-law and administrative practices related to intermediary liability and will examine any future need to adapt the present framework in the light of these developments, for instance, the need of additional limitations on liability for other activities such as the provision of hyperlinks and search engines.

### **More information ?**

Reading the class action lawsuit [available on our website](#).

Reading our articles and slides available on ULYS website :

1. [Advertising for remote gaming : a legal minefield ?](#)
2. [Post-Gambelli caselaw : a European overview](#)
3. [and the slides of our conference](#)

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"Droit et Nouvelles Technologies" - Avenue Vanden Thoren 80 - 1160 Bruxelles - Belgique  
Tél. c/o Thomas Parvais & Etienne Wéry : +32 (0)2 340 88 10 - Email: [info@droit-technologie.org](mailto:info@droit-technologie.org)

